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UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 3-11-02

2 Serial/Patent # 09/994,519

3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
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Extension of Time			\$
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Petition	3	1-17-02	\$ 130 -
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DATE: 3-22-02

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Crystal Park One, Room 802B



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Crawford et al.)
Appln. No.: 09/994,519) 1/17/02 EL59166005US
Filed: 11/26/2001) Date "Express Mail No."
For: METHOD FOR ESTIMATING)
CARRIER-TO-NOISE-PLUS-)
INTERFERENCE RATIO)
(CNIR) FOR OFDM)
WAVEFORMS AND THE USE)
THEREOF FOR DIVERSITY)
ANTENNA BRANCH)
SELECTION)
Group Art)
Unit: 2681)
Examiner: Not Yet Assigned)

RECEIVED
MAR 07 2002
OFFICE OF PETITIONS

PETITION IN RESPONSE TO NOTICE OF OMITTED ITEM(S)
IN A NONPROVISIONAL APPLICATION
UNDER 37 C.F.R. § 1.53(e)

Asst. Commissioner for Patents
Washington, D.C. 20231

Sir:

Responsive to the enclosed Notice of Omitted Item(s) from the United States Patent and Trademark Office dated December 11, 2001, Applicants provide the following petition under 37 C.F.R. § 1.53(e) and include the appropriate petition fee under 37 C.F.R. § 1.17(b). Specifically, Applicants elect to take action pursuant to option (I) in the Notice of Omitted Item(s).

Applicants contend that drawing sheet 19 which illustrated Figures 20 and 21 described in the specification of the present application was in fact deposited in the United States Patent and Trademark Office with the non-provisional application papers mailed on November 26, 2001.

Applicants submit herewith a copy of the Notice of Omitted Item(s) in a Nonprovisional Application.

Applicants also submit herewith a copy of drawing sheet 19 which includes Figures 20 and 21.

Applicants also submit herewith the Declaration of Scott J. Menghini (hereinafter referred to as the Menghini declaration) and supporting Exhibits A-C as evidence indicating that drawing sheet 19 was in fact deposited in the United States Patent and Trademark Office on November 26, 2001. Scott J. Menghini is the attorney who prepared and filed the present application.¹

As shown in the Menghini declaration and Exhibit A, Applicants properly deposited the nonprovisional application papers with the United States postal Service by "Express Mail Post office to Addressee" in accordance with 37 C.F.R. § 1.10 on November 26, 2001.² Thus, all papers deposited in this submission should be accorded a filing date of November 26, 2001.

The MPEP provides in part that in response to a "Notice of Omitted Item(s)" the applicant can "promptly establish prior receipt in the USPTO of the drawing(s) at

¹Menghini declaration, paragraph 3

²Menghini declaration, paragraphs 5-8 and Exhibit A

issue (generally by way of a date-stamped postcard receipt (MPEP § 503))."³

The MPEP also states that "a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."⁴ Additionally, the MPEP states that "if a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath/declaration."⁵ Furthermore, the person receiving the item(s) in the USPTO will check the listing on the postcard against the items(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO.⁶ If any items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.⁷

As provided in the attached Declaration of Scott J. Menghini and Exhibit B, Applicants' Return Receipt Postcard clearly identified all parts of the

³MPEP § 601.01(g)

⁴MPEP § 503

⁵MPEP § 503

⁶MPEP § 503

⁷MPEP § 503

application in accordance with the exact suggestion provided in MPEP § 503, i.e., identifying the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, and number of pages of oath/declaration.⁸ The postcard of Exhibit A clearly identifies that 19 sheets of drawings were deposited.⁹ It is submitted that the 19th sheet of drawings illustrates Figures 20 and 21.¹⁰

As is clearly shown, the copy of the Return Receipt Postcard is date stamped November 26, 2001.¹¹ Furthermore, no items listed the Return Receipt Postcard are crossed off and initialed by the person receiving the submission in the USPTO.¹²

Therefore, in accordance with MPEP § 503, the Return Receipt Postcard of Exhibit B establishes *prima facie* evidence that drawing sheet 19 illustrating Figures 20 and 21 was in fact deposited in the USPTO with the non-provisional application on November 26, 2001.

Additionally, the declaration of Scott J. Menghini outlines his standard procedure used for filing a nonprovisional application in the USPTO. This standard practice includes (1) comparing the Brief description of the Drawings section with the drawings present when counting drawings in order to ensure that every drawing

⁸Menghini declaration, paragraphs 9-13 and Exhibit B

⁹Menghini declaration, paragraph 13 and Exhibit B

¹⁰Menghini declaration, paragraph 16

¹¹Menghini declaration, paragraph 10 and Exhibit B

¹²Menghini declaration, Exhibit B

described in the specification is present in the set of drawings and then to count the number of pages of drawings¹³ and (2) counting all of the pages of drawings to verify the information listed on the Transmittal prior to signing the Transmittal¹⁴. The Utility Patent Application Transmittal filed in the present application indicates that there are 19 sheets of drawings.¹⁵

This standard practice also includes (3) counting all of the pages of the parts of the filing (including the number of pages of drawings) and comparing to that stated on the Return Receipt Postcard prior to initialing the Return Receipt Postcard¹⁶, (4) attaching the written description, drawings and Declaration/Power of Attorney together¹⁷ and (5) recounting the attached papers again verifying that the number of pages matches that indicated on the Return Receipt Postcard before personally placing and sealing the papers in the Express mail envelope¹⁸.

Mr. Menghini has followed this practice since at least prior to the beginning of 2001.¹⁹ Therefore, based upon his standard practice and his detailed manner,

¹³Menghini declaration, paragraph 17

¹⁴Menghini declaration, paragraph 18

¹⁵Menghini declaration, paragraph 15 and Exhibit C

¹⁶Menghini declaration, paragraph 19

¹⁷Menghini declaration, paragraph 20

¹⁸Menghini declaration, paragraph 21

¹⁹Menghini declaration, paragraph 23

Petition
Appln. No. 09/994,519
Page -6-

Mr. Menghini is certain that drawing sheet 19 illustrating Figures 20 and 21 was included with the non-provisional application papers deposited with the United States Patent & Trademark Office on November 26, 2001.²⁰

²⁰Menghini declaration, paragraph 24

CONCLUSION

Therefore, based upon the Return Receipt Postcard returned from the USPTO and the detailed standard practice of the attorney who filed the present application, Applicants have shown above that drawing sheet 19 was in fact deposited with the United States Patent & Trademark Office on November 26, 2001. Thus, Applicants respectfully request and hereby petition that drawing sheet 19, a copy of which is provided herewith, be placed in the file and accorded a filing date of November 26, 2001.

Should there remain any outstanding issues it is respectfully requested the office telephone the undersigned at (858) 552-1311 so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,



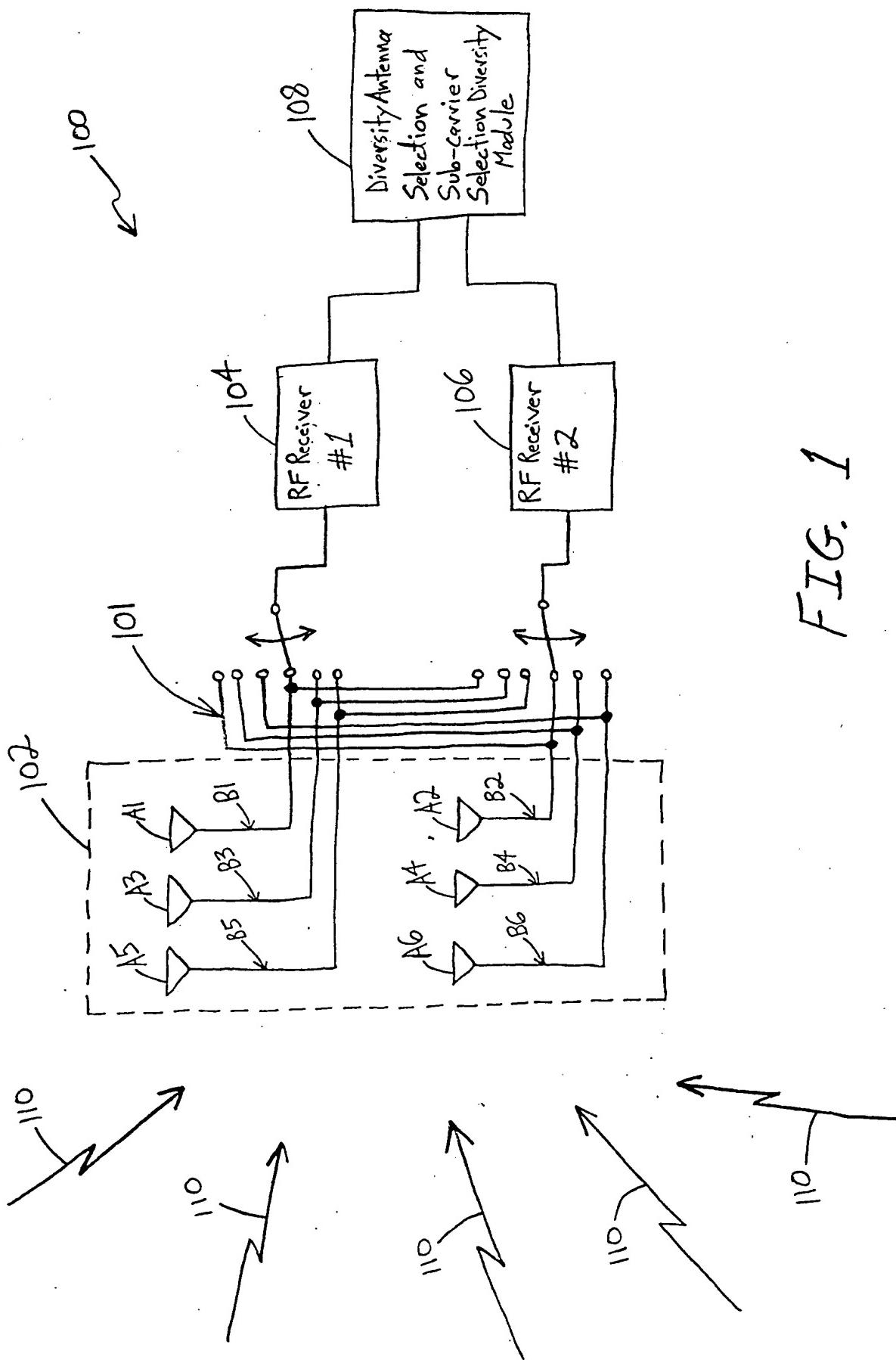
Richard E. Wawrzyniak
Reg. No. 36,048

Dated: 1/17/02

Attachments: Copy of Notice of Omitted Item(s)
Copy of drawing sheet 19 (Figs. 20 and 21)
Declaration of Scott J. Menghini
Exhibit A
Exhibit B
Exhibit C

Address all correspondence to:

FITCH, EVEN, TABIN & FLANNERY
Richard E. Wawrzyniak
120 South LaSalle Street, Ste. 1600
Chicago, IL 60603
(858) 587-7641



F052TT 6T546660

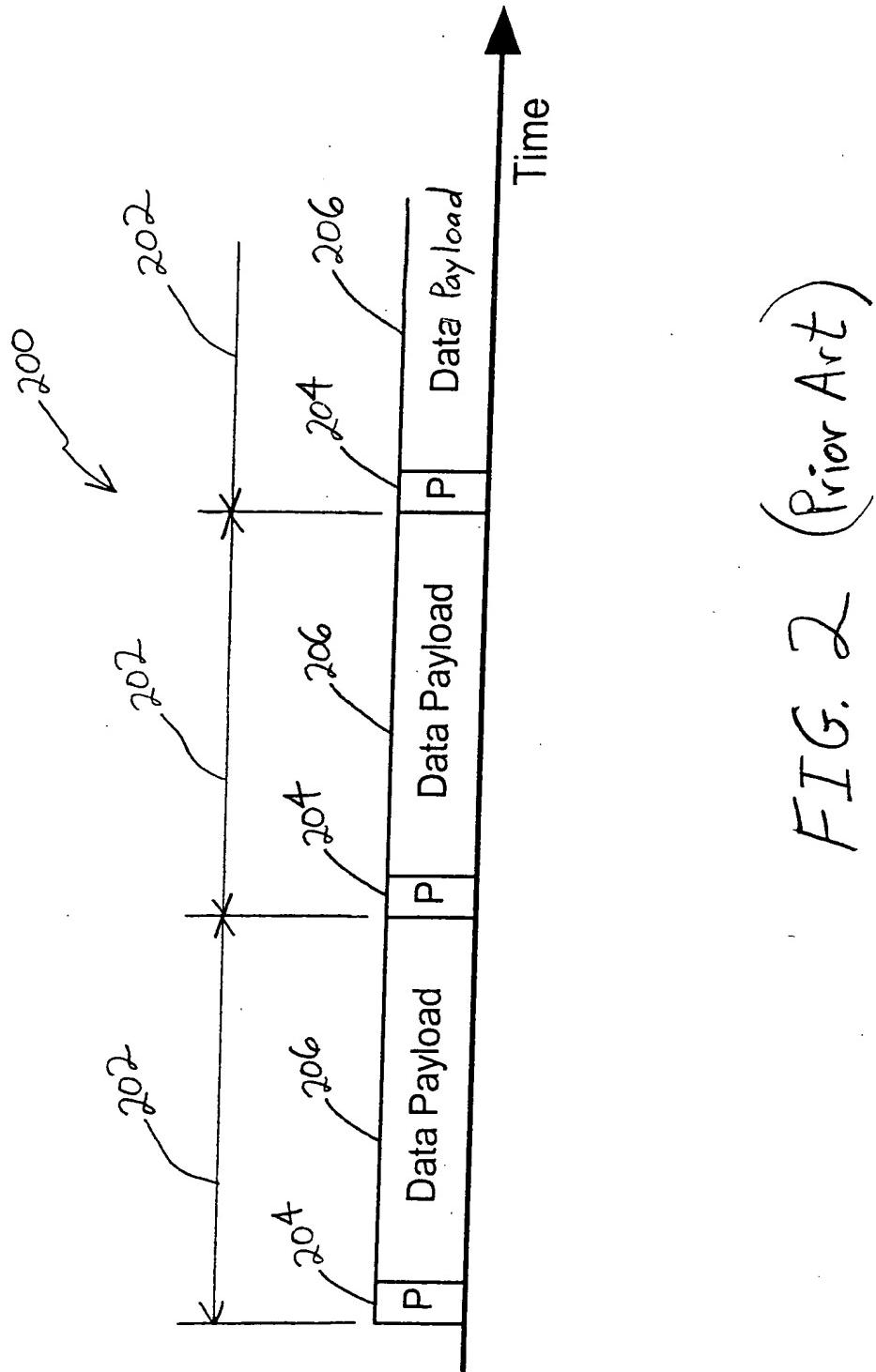


FIG. 2 (Prior Art)

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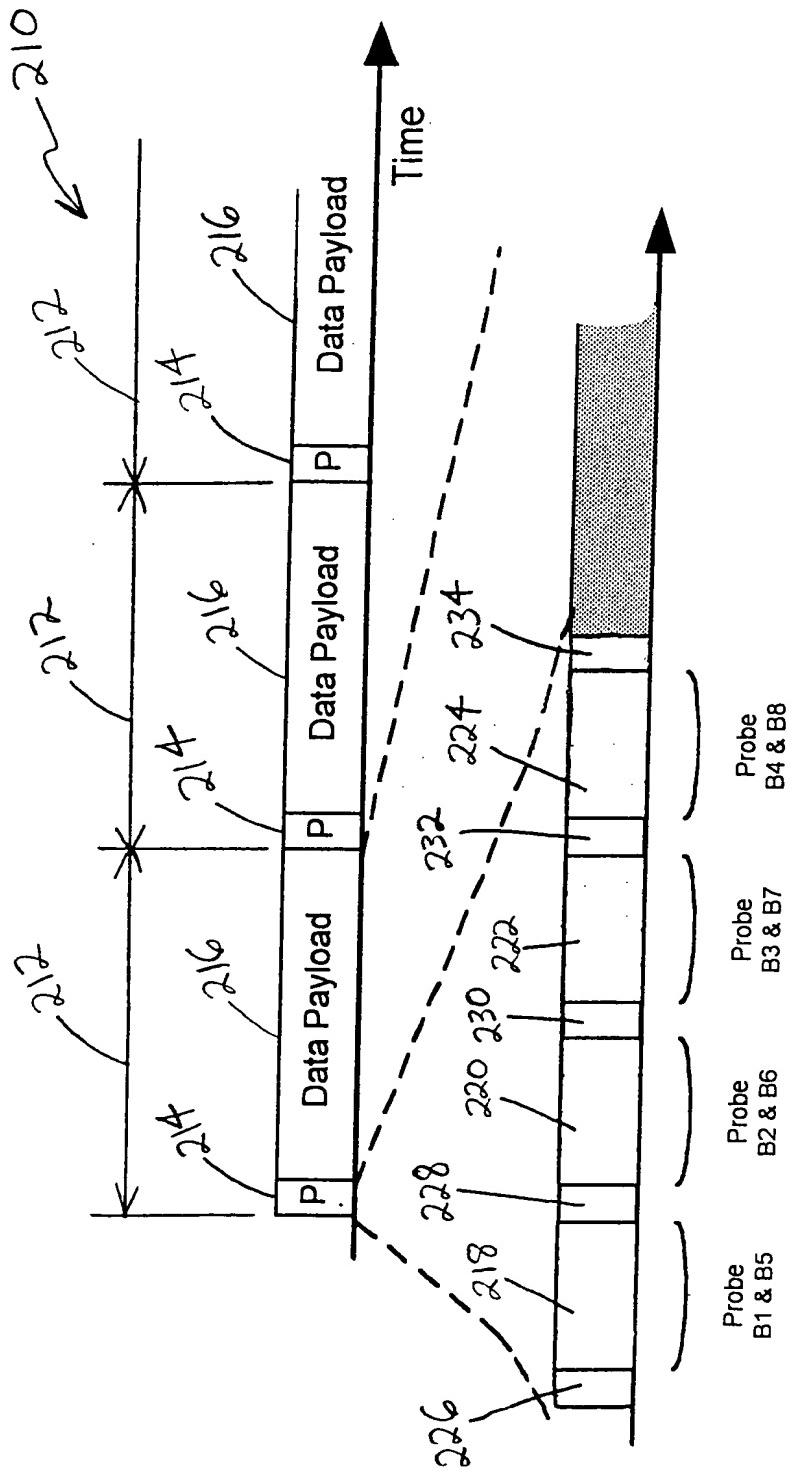


FIG. 3

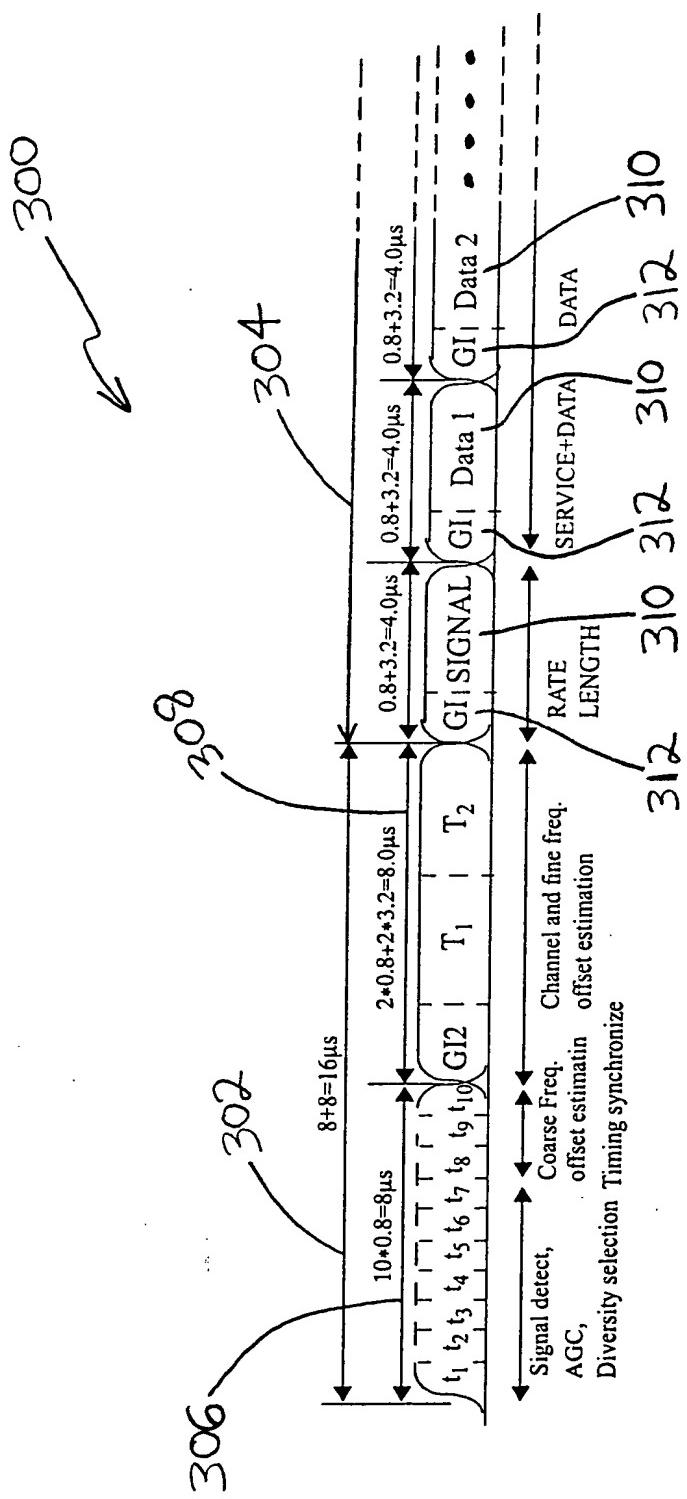


FIG. 4 (Prior Art)

Title: METHOD FOR ESTIMATING CARRIER-TO-NOISE-PLUS-INTERFERENCE RATIO (CNIR) FOR OFDM WAVEFORMS AND THE USE THEREOF FOR DIVERSITY ANTENNA BRANCH SELECTION

Inventors: James A. Crawford et al.

Fitch, Even, Tabin & Flannery - Attorney Docket No. 70629

T092TT-BTS#16660

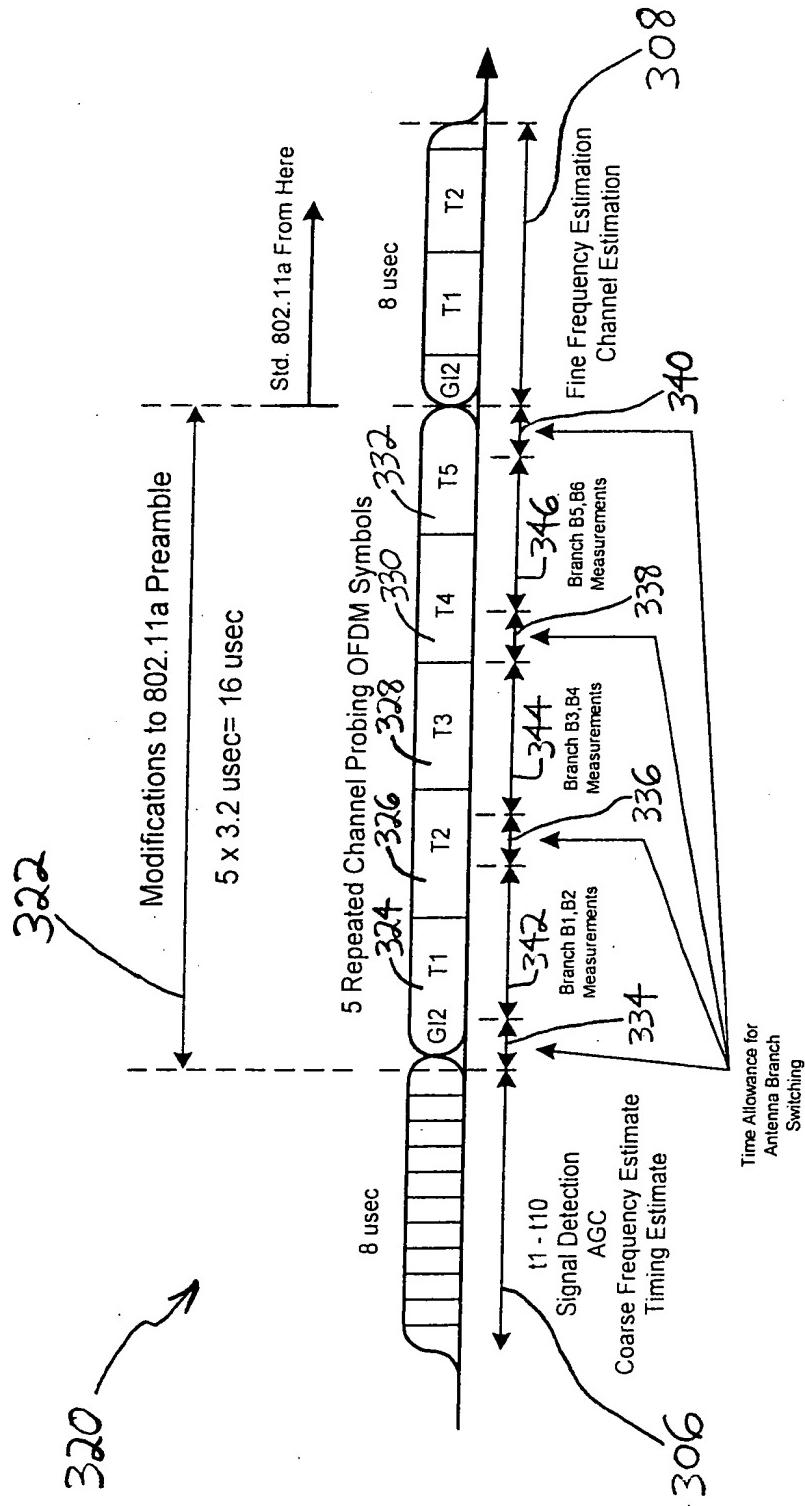


FIG. 5

Title: METHOD FOR ESTIMATING CARRIER-TO-NOISE-PLUS-INTERFERENCE RATIO (CNIR) FOR OFDM WAVEFORMS AND THE USE THEREOF FOR DIVERSITY ANTENNA BRANCH SELECTION

Inventors: James A. Crawford et al.

Fitch, Even, Tabin & Flannery - Attorney Docket No. 70629

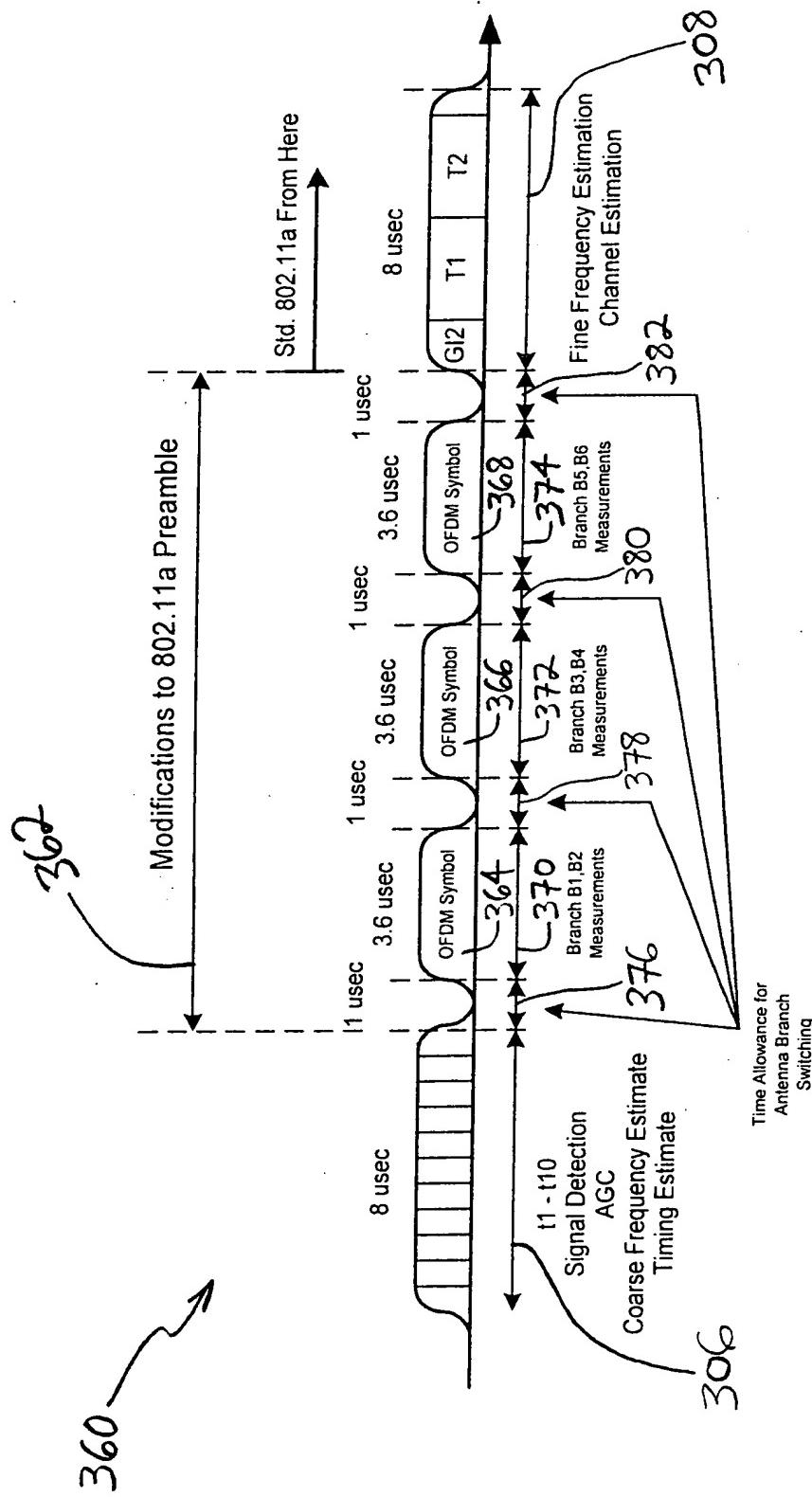


FIG. 6

Title: METHOD FOR ESTIMATING CARRIER-TO-NOISE-PLUS-INTERFERENCE RATIO (CNIR) FOR OFDM WAVEFORMS AND THE USE THEREOF FOR DIVERSITY ANTENNA BRANCH SELECTION

Inventors: James A. Crawford et al.

Fitch, Even, Tabin & Flannery - Attorney Docket No. 70629

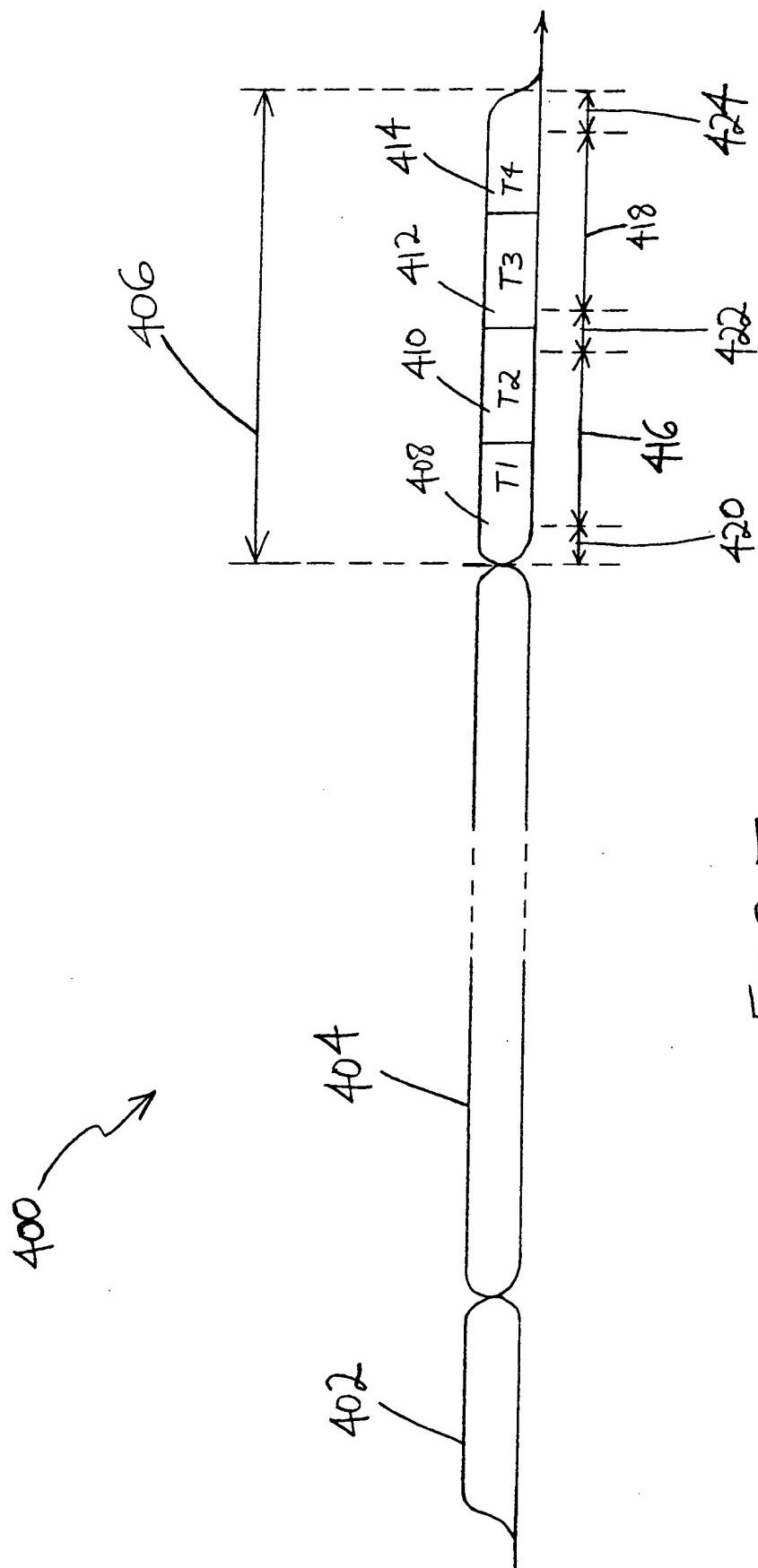


FIG. 7

Title: METHOD FOR DETERMINING CARRIER-TO-NOISE-PLUS-INTERFERENCE RATIO (CNIR) FOR OFDM WAVEFORMS AND THE USE THEREOF FOR DIVERSITY ANTENNA BRANCH SELECTION

Inventors: James A. Crawford et al.

Fitch, Even, Tabin & Flannery - Attorney Docket No. 70629

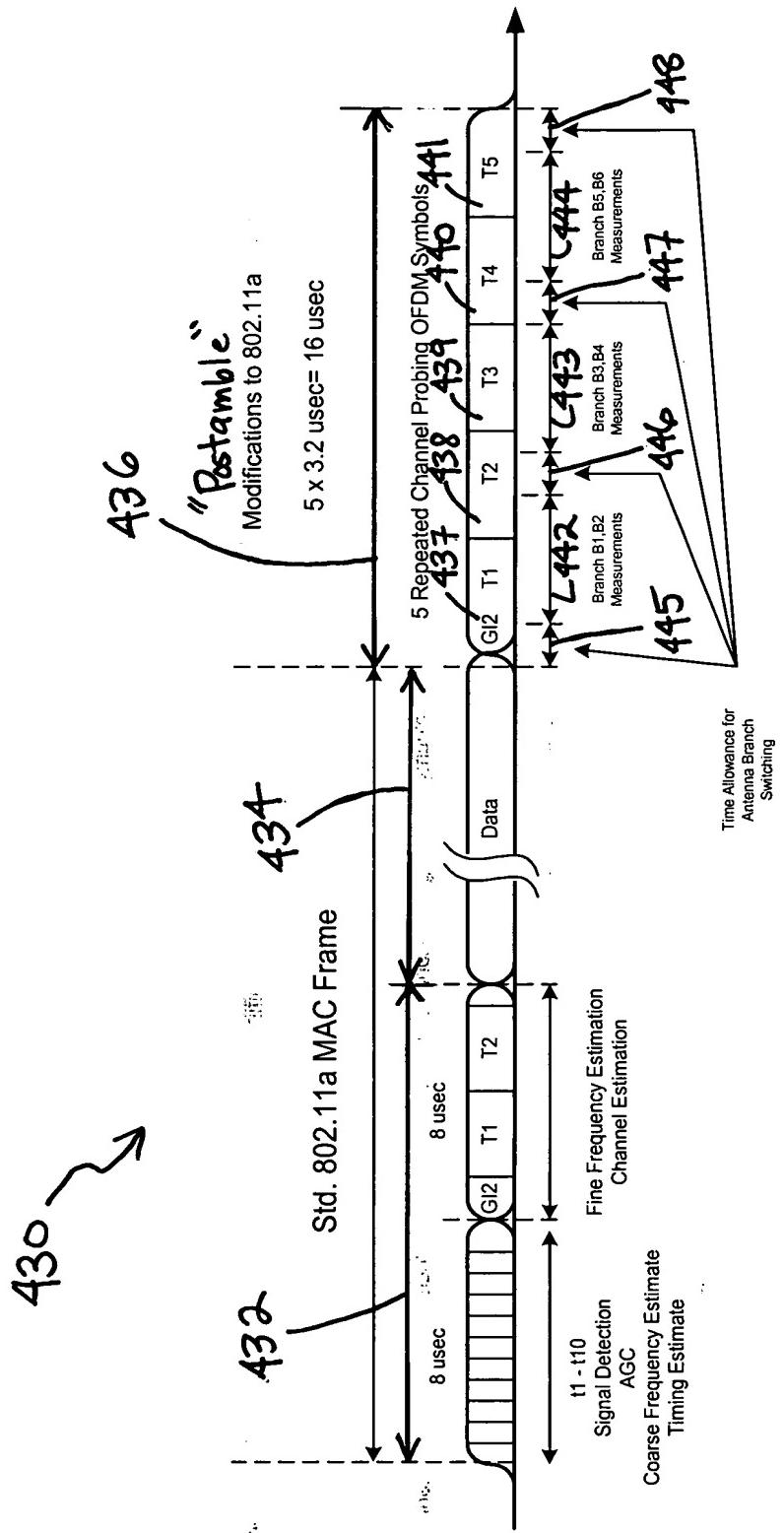


FIG. 8

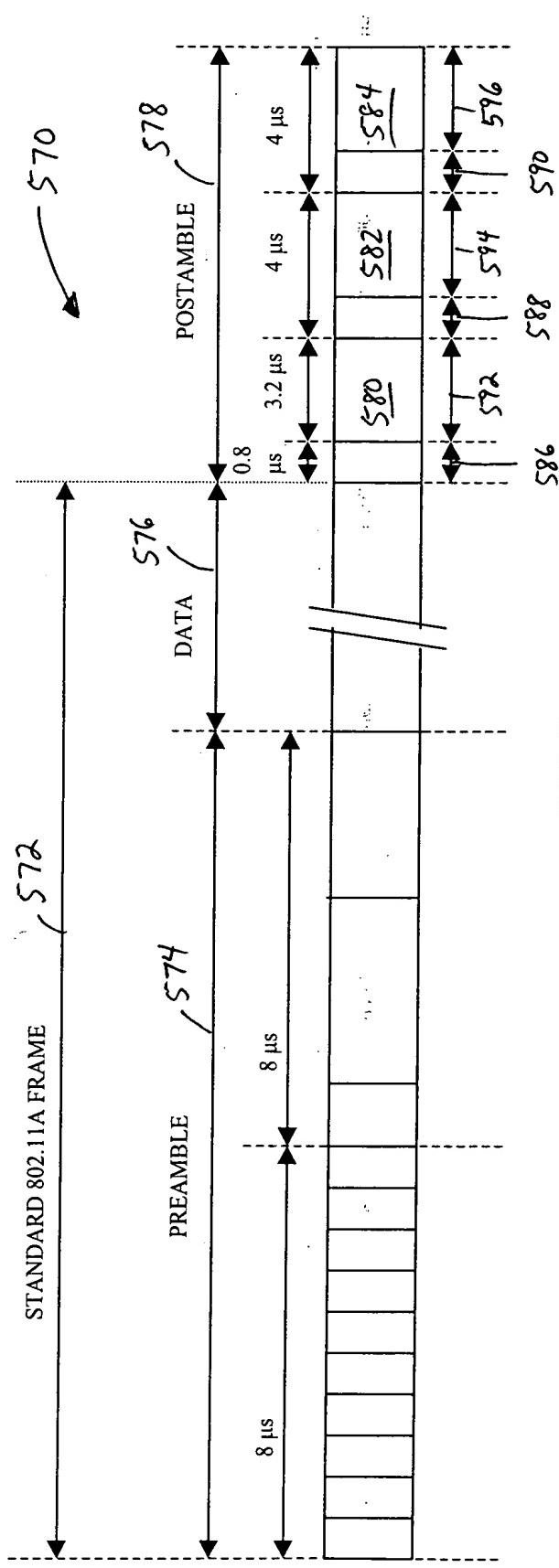


FIG. 9

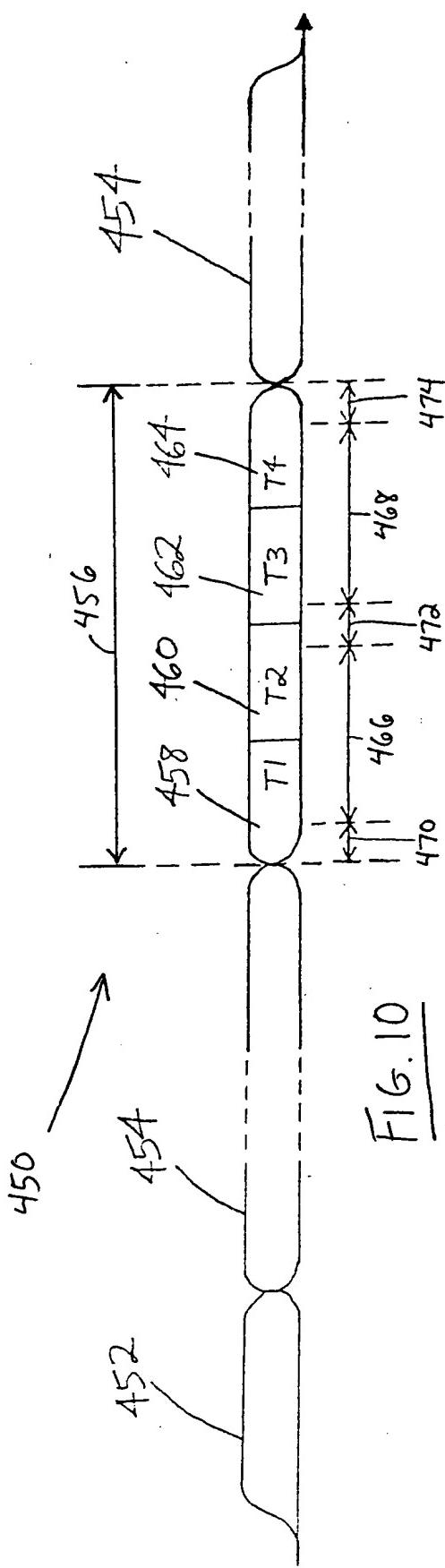


FIG. 10

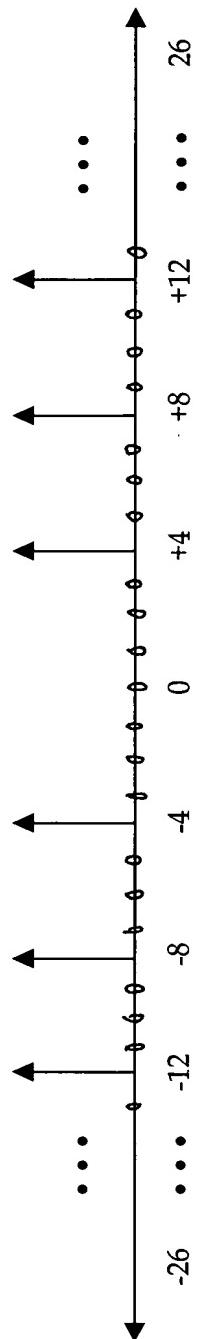


FIG. 11

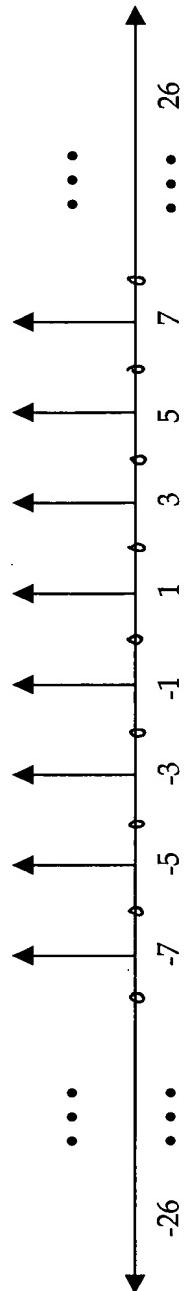
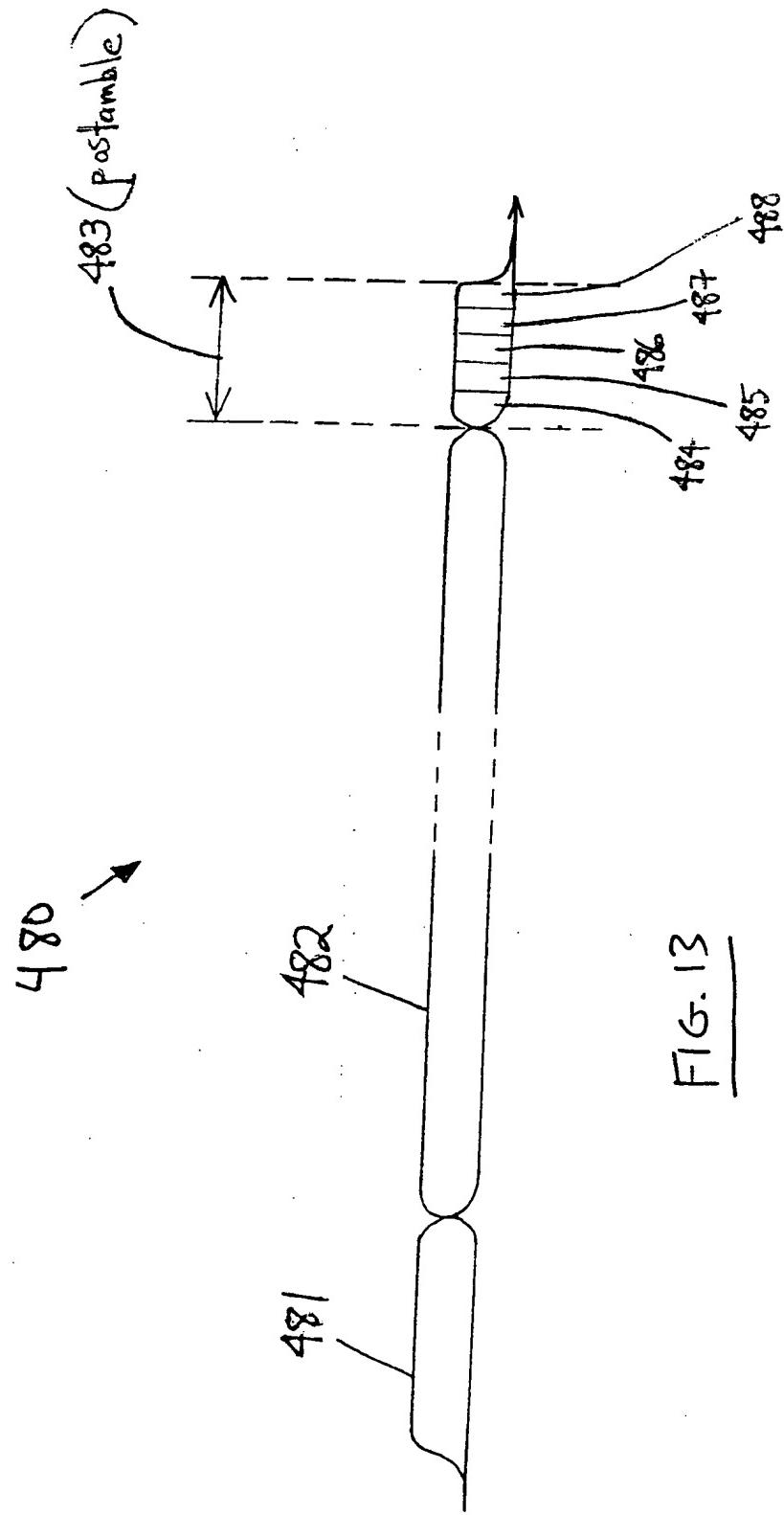


FIG. 12

F032TT-E7546660



TOP SECRET//STAYSAFE

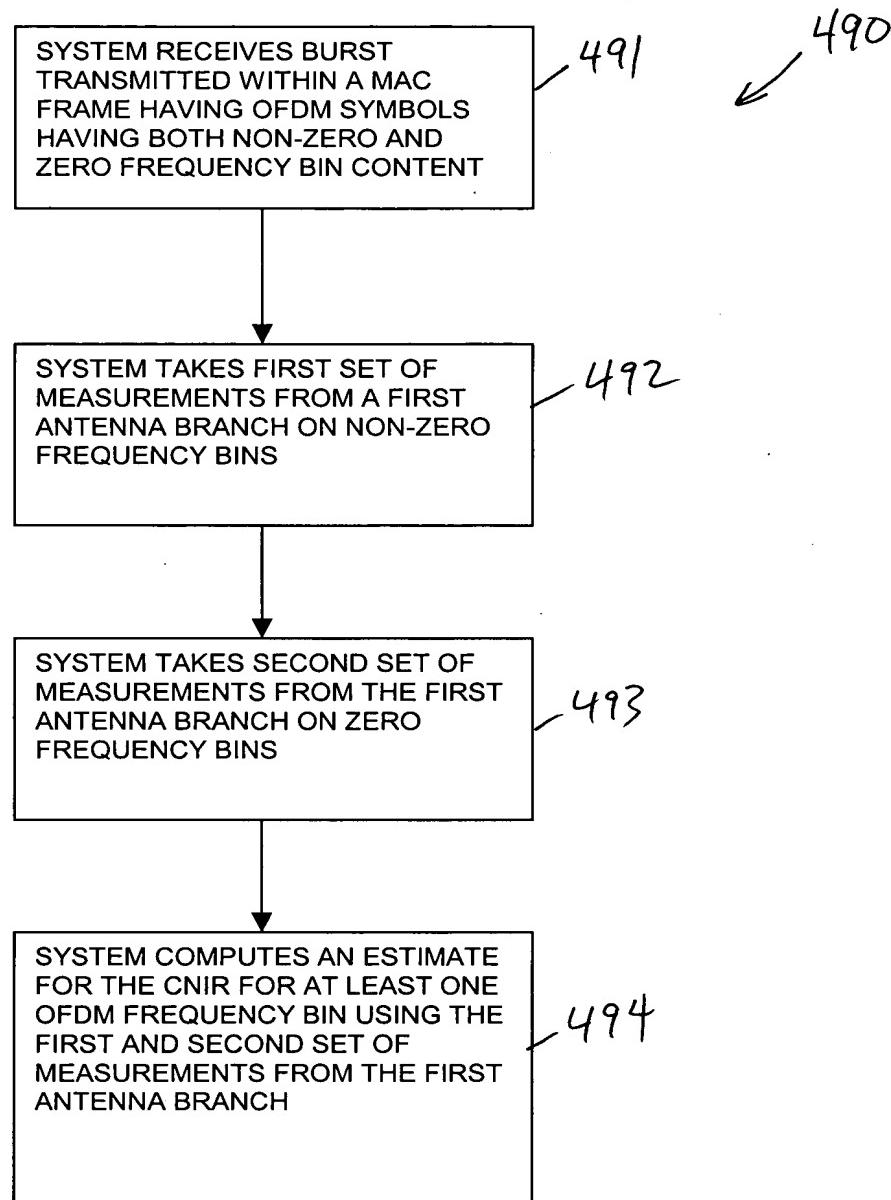


FIG. 14

F092TTF" 6T5416650

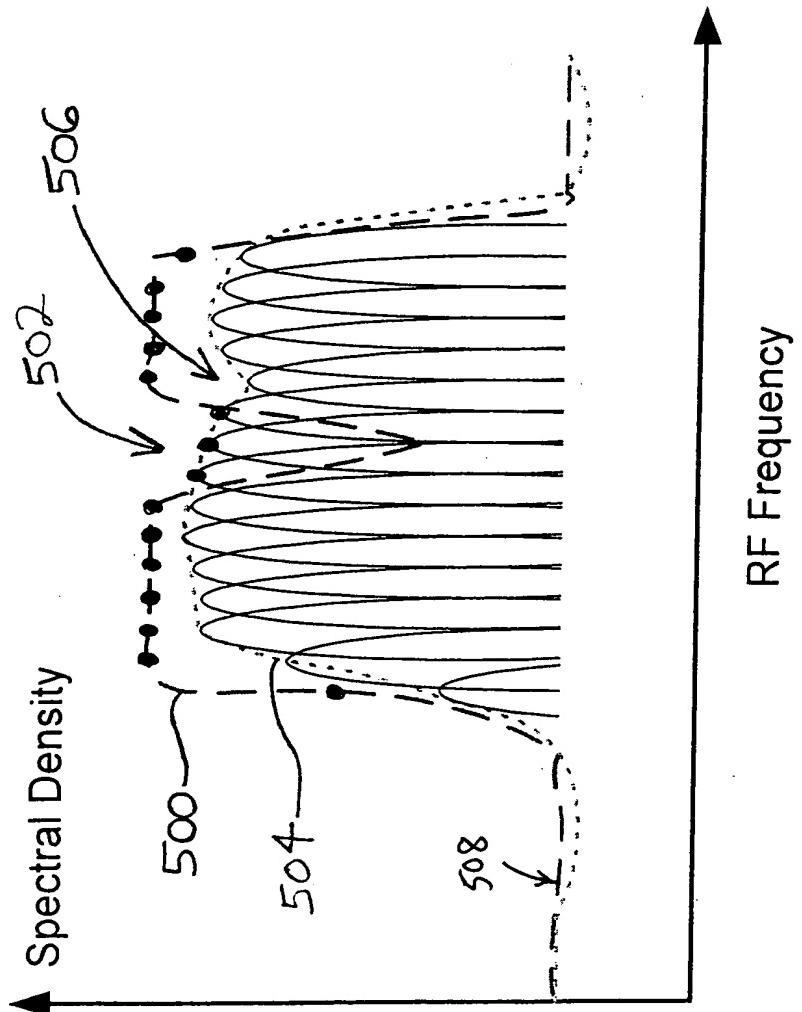


FIG. 15

T092TTT-EUTSHE0560

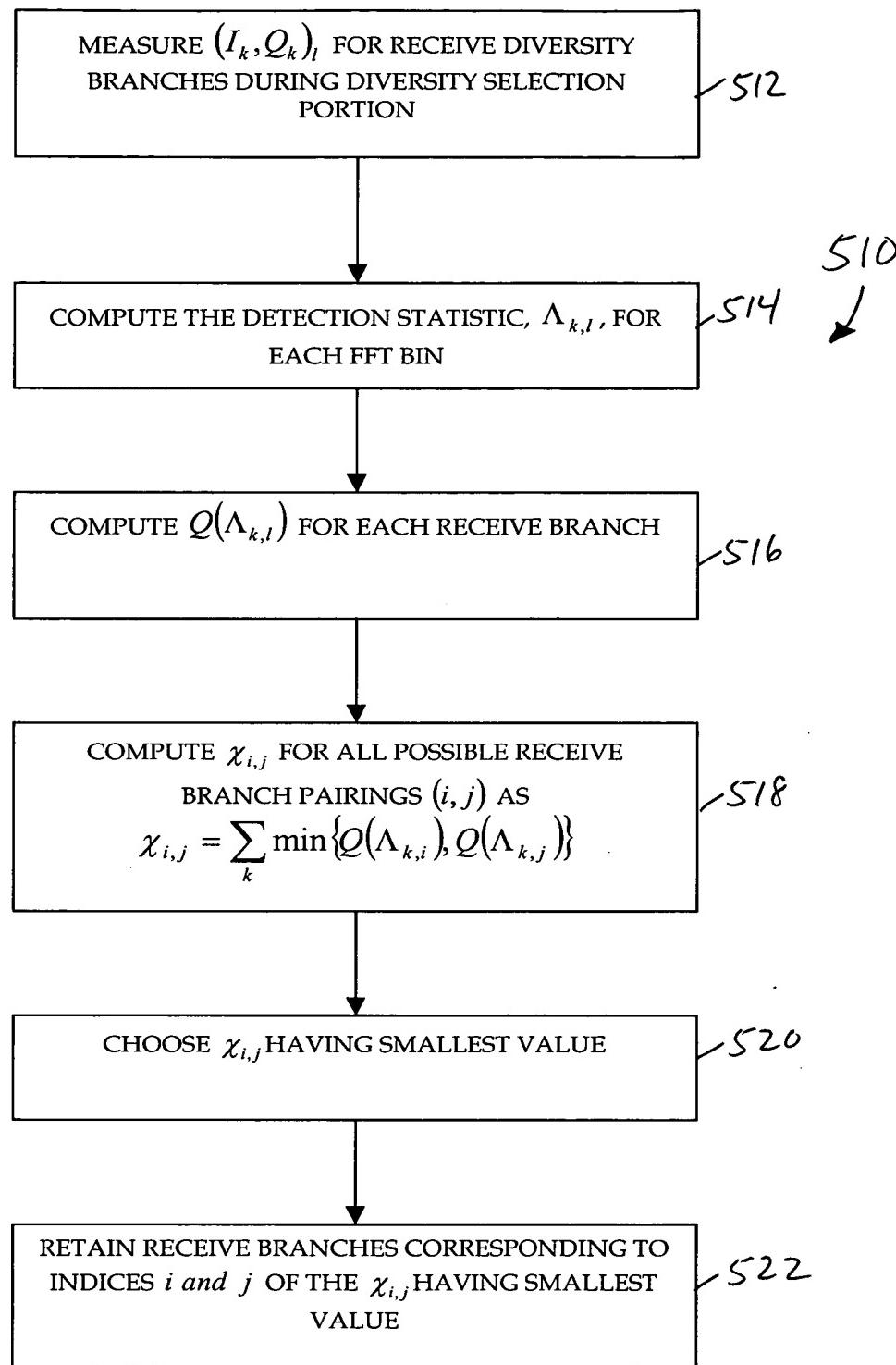


FIG. 16

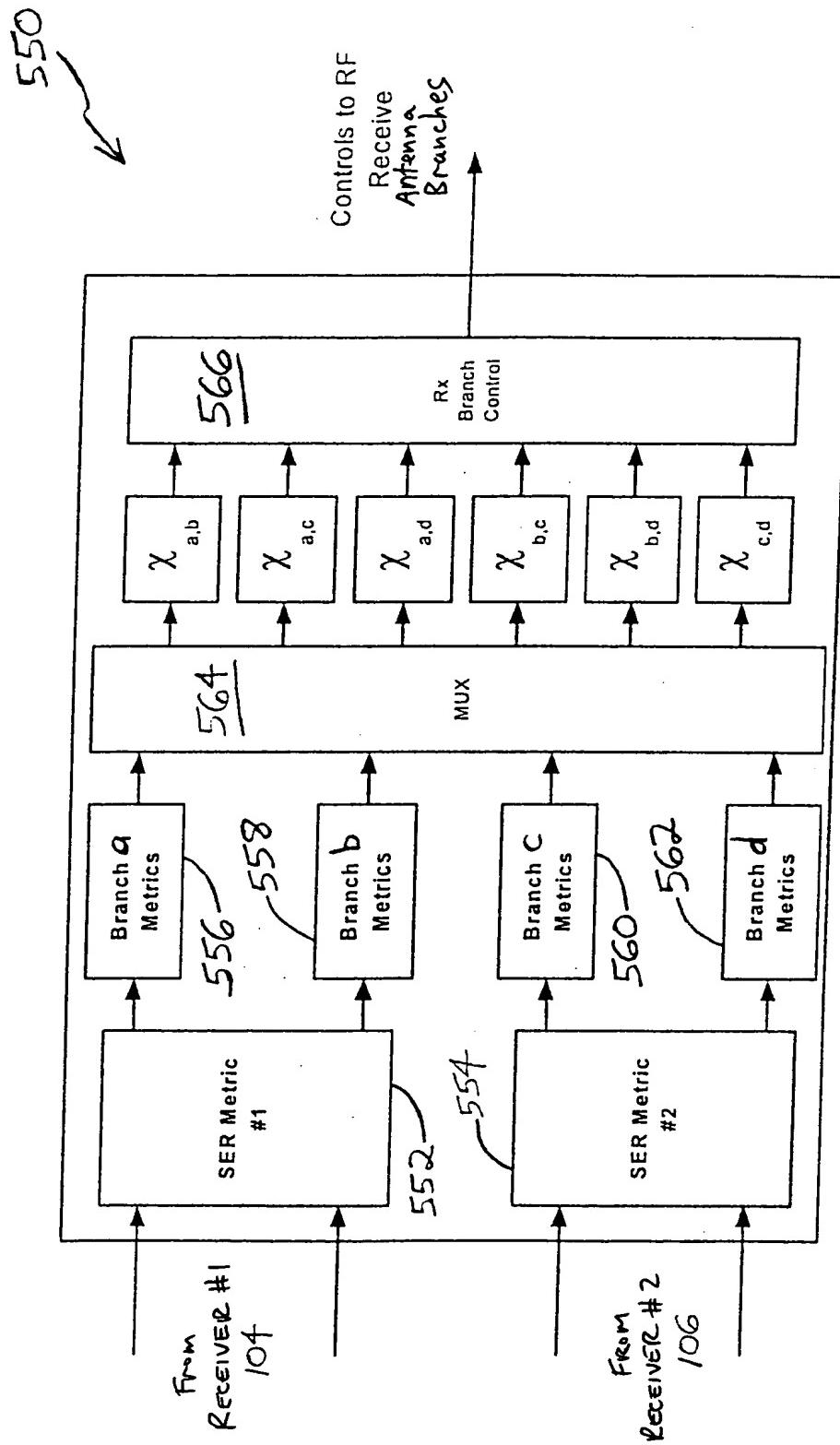
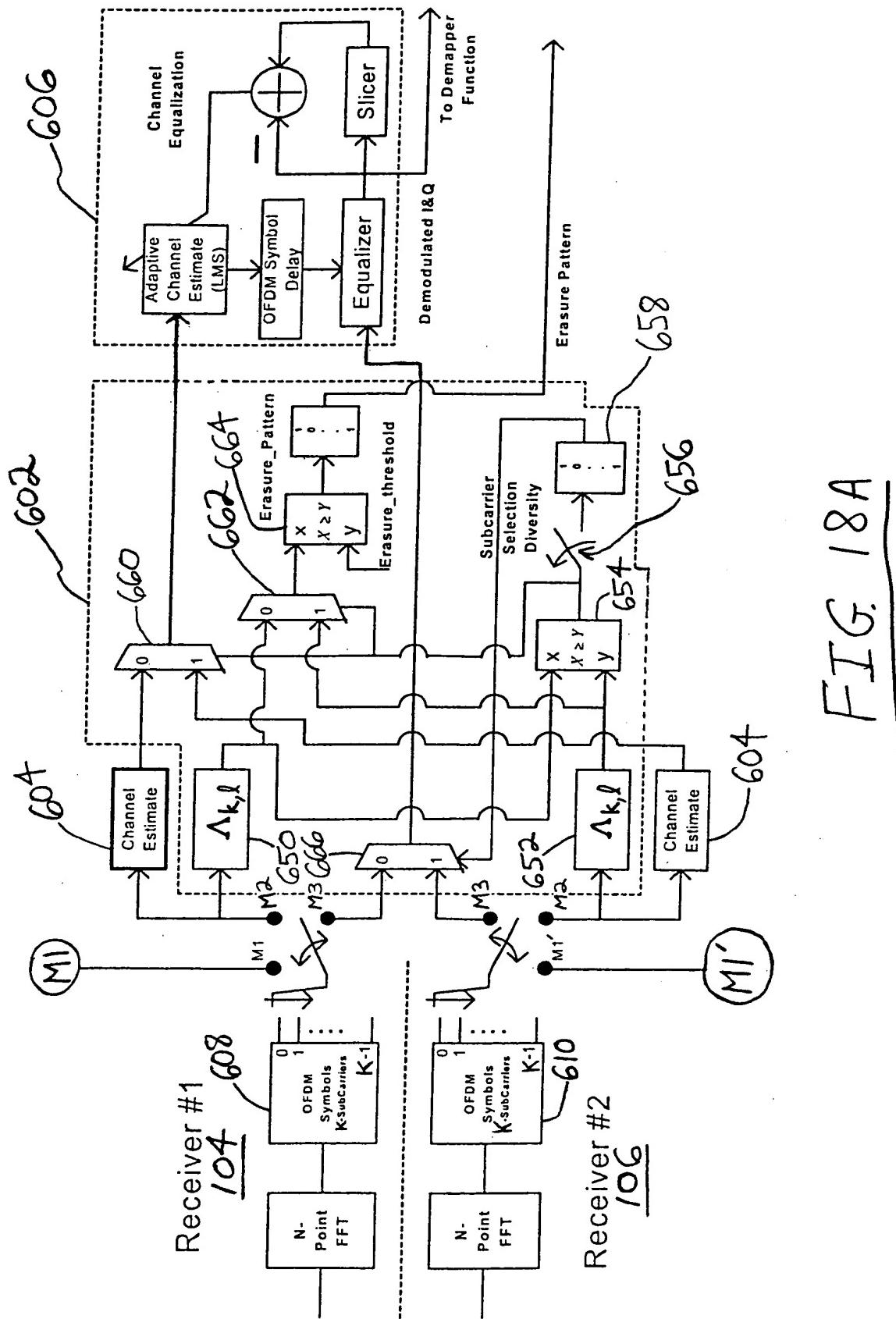


FIG. 17



Title: METHOD FOR DETERMINING CARRIER-TO-NOISE-PLUS-INTERFERENCE RATIO (CNIR) FOR OFDM WAVEFORMS AND THE USE THEREOF FOR DIVERSITY ANTENNA BRANCH SELECTION

Inventors: James A. Crawford et al.

Fitch, Even, Tabin & Flannery - Attorney Docket No. 70629

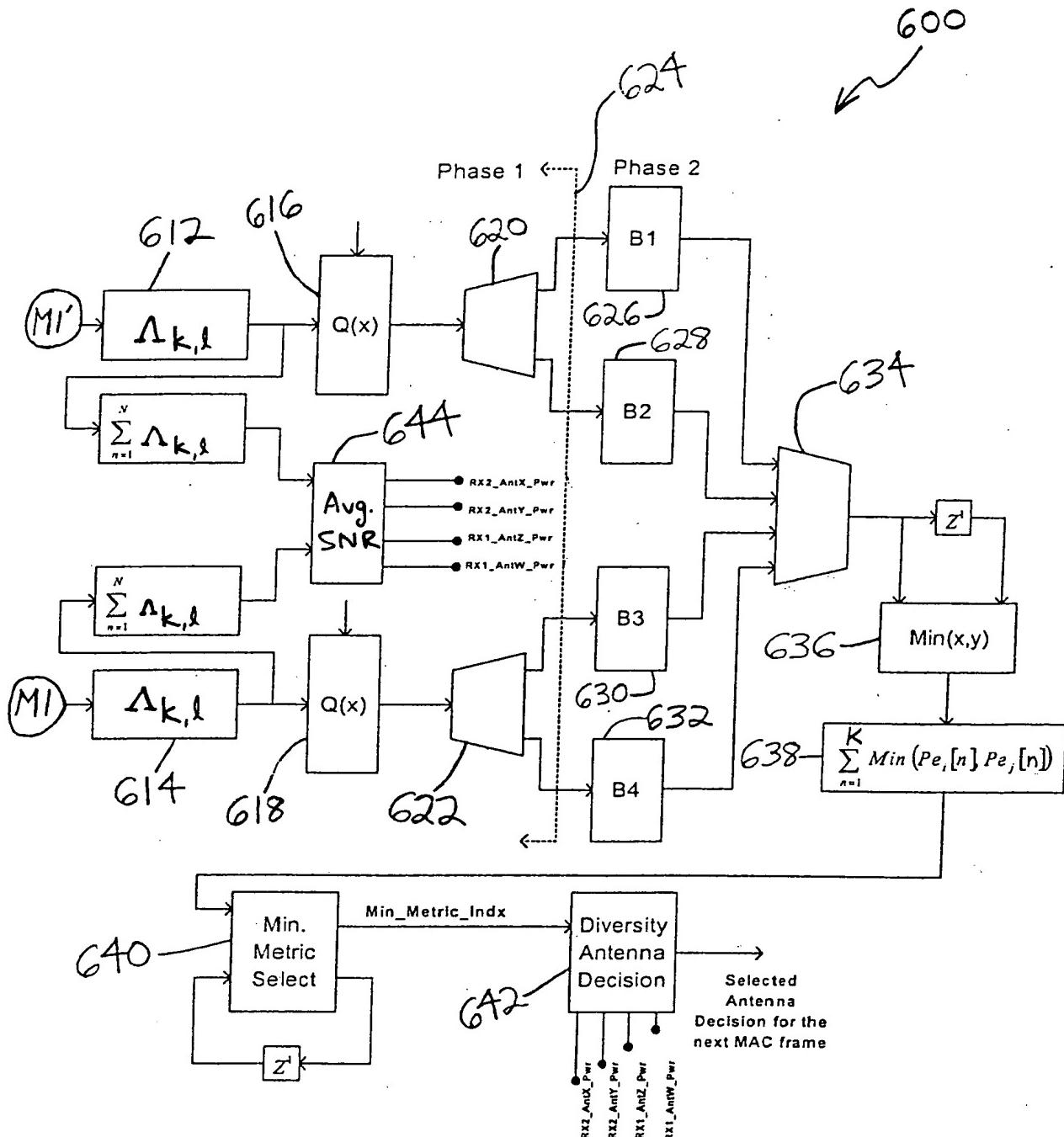


FIG. 18B

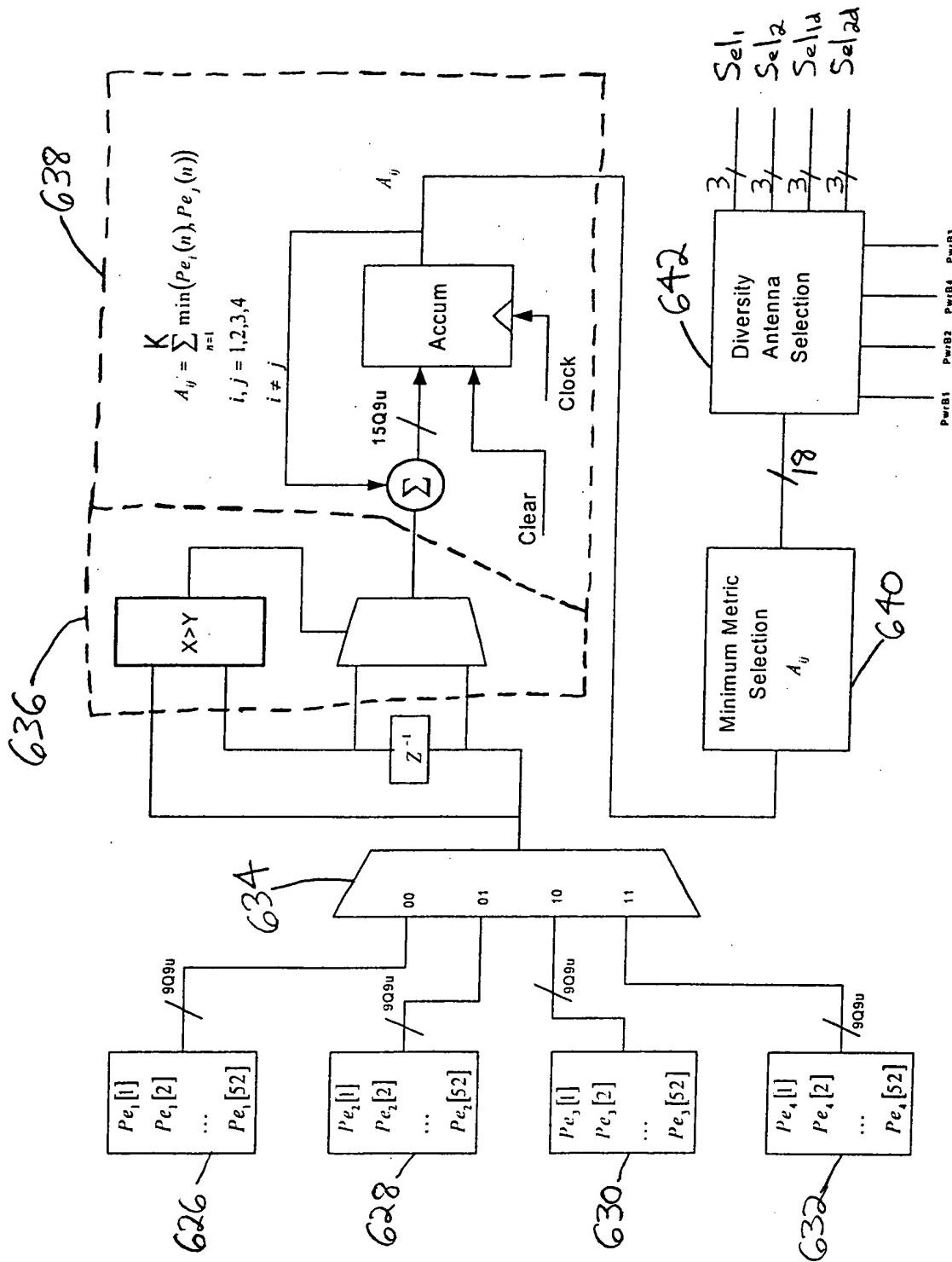
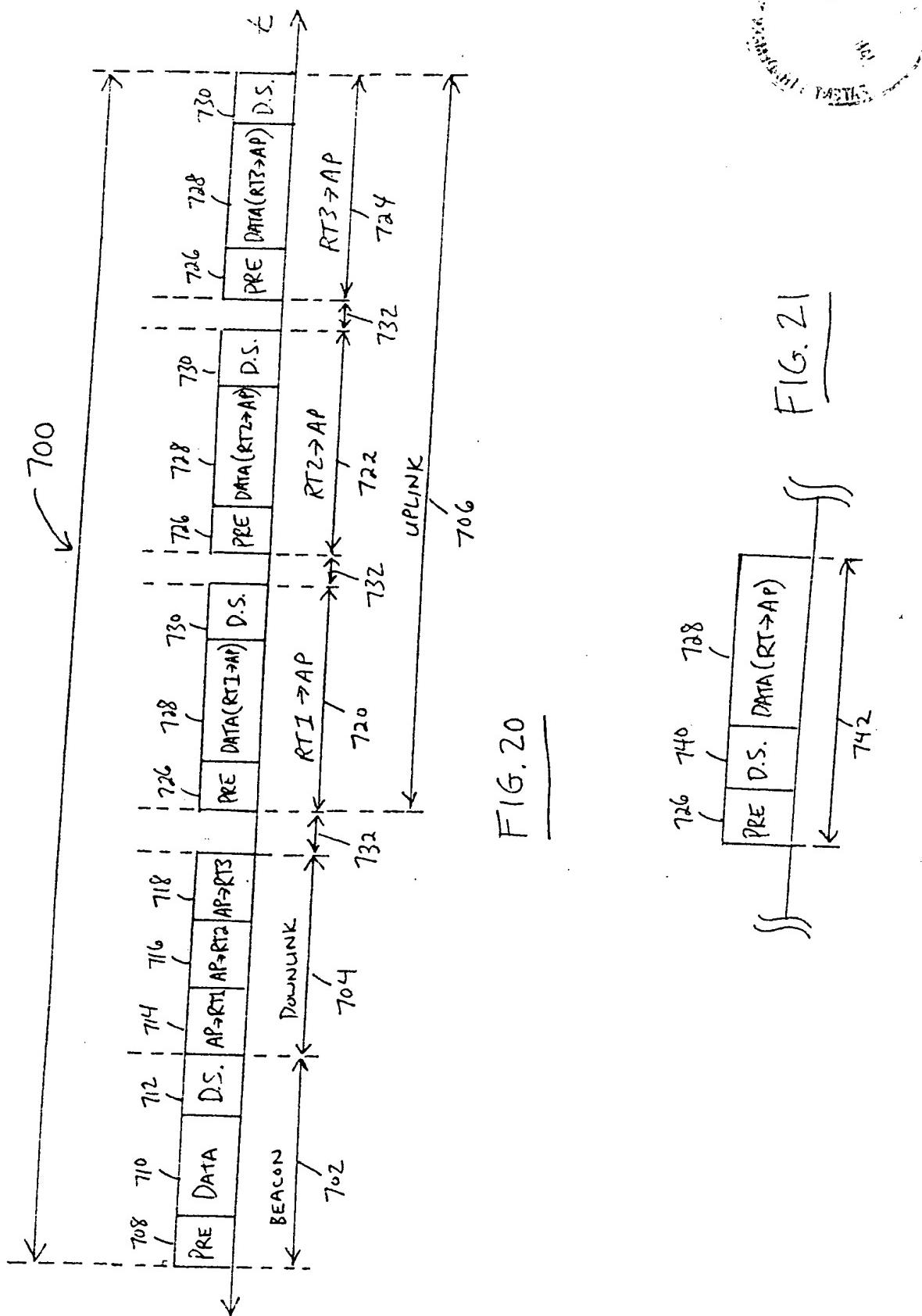


FIG. 19





FETF 70629

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Crawford et al.)
Appln. No.: 09/994,519) 1/17/02 EL591660052US
Filed: 11/26/2001) Date "Express Mail No."
For: METHOD FOR ESTIMATING)
CARRIER-TO-NOISE-PLUS-)
INTERFERENCE RATIO)
(CNIR) FOR OFDM)
WAVEFORMS AND THE USE)
THEREOF FOR DIVERSITY)
ANTENNA BRANCH)
SELECTION)
Group Art)
Unit: 2681)
Examiner: Not Yet Assigned)

DECLARATION OF SCOTT J. MENGHINI

Asst. Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Scott J. Menghini, declare as follows:

1. I am currently registered to practice before the United States Patent and Trademark Office. My registration number is 42,880.

2. I am presently a legal representative of Applicants in the present application.

3. I personally prepared the present application. This preparation included drafting the written description and claims and preparing all of the drawings. Thus, I prepared the drawings in FIGS. 20 and 21 and the written description thereof.

4. I filed the present application in the United States Patent and Trademark Office on November 26, 2001.

5. The present application and transmittal documents were deposited with the United States Postal Service (USPS) by "Express Mail Post Office to Addressee" in accordance with 37 C.F.R. § 1.10.

6. Attached hereto as Exhibit A is a copy of the original Express Mail Mailing Label, Express Mail Label No. EL631248995US, that accompanied the present application and transmittal documents on November 26, 2001.

7. The Express Mail Mailing Label of Exhibit A indicates the "date in" as November 26, 2001.

8. The present application and transmittal documents were deposited directly with an employee of the Golden Triangle Office, San Diego of the USPS. This employee stamped the Express Mail Mailing Label with date November 26, 2001 and provided the Express Mail Mailing Label of Exhibit A.

9. Attached hereto as Exhibit B is a copy of the Return Receipt Postcard included with the documents deposited with the USPS on November 26, 2001 and as received by Applicants December 11, 2001 from the United States Patent and Trademark Office.

10. The Return Receipt Postcard included a sticker according Application No. 09/994,519 and a filing date of November 26, 2001.

11. The Return Receipt Postcard also is labeled with Express Mail No. EL631248995US.

12. It is my standard practice to include a Return Receipt Postcard that accompanies every submission I file with the United States Patent and Trademark Office. It is my standard practice that the Return Receipt Postcard accompanying a new application clearly identify all parts being filed, e.g., the number of pages in the specification (including the written description, claims and abstract), number of claims, number of sheets of drawings, number of pages of oath, etc. in accordance with MPEP 503.

13. The Return Receipt Postcard of Exhibit B lists 19 sheets of drawings included in the submission of November 26, 2001 in accordance with MPEP 503.

14. Also attached hereto as Exhibit C is a copy of the Utility Patent Application Transmittal deposited with the USPS to be sent to the United States Patent and Trademark Office with the present application on November 26, 2001.

15. The Transmittal of Exhibit C also is labeled with Express Mail Label No. EL631248995US and also lists 19 sheets of drawings.

16. In the present application, 19 sheets of drawings corresponds to FIGS. 1-21 and the 19th sheet of drawings includes FIGS. 20 and 21.

17. It is my standard practice when determining the number of drawings that should be listed on a Utility Patent Application Transmittal to look at the Brief Description of the Drawings section of the specification and compare it to the set of drawings to ensure that every drawing described in the specification is present in the set of drawings and then to count the number of pages of drawings.

18. It is my standard practice to personally count and total the number of pages in the specification, drawings and oath to verify the information listed on the Utility Patent Application Transmittal prior to signing the Transmittal.

19. It is my standard practice, that once all of the components of the submission are assembled, to personally count the number of pages in the specification, drawings, declaration, power of attorney, assignment, etc., and verify that the number of pages indicated on the Return Receipt Postcard is consistent with the number of pages in the submission before initialing the postcard.

20. It is my standard practice, that once the Return Receipt Postcard is initialed, that the pages listed on the Return Receipt Postcard as the Cover Sheet, the Specification (including the written description, Claims and Abstract), Drawings and Declaration/Power of Attorney are attached together using a metal clip snapped through a hole punched into the upper left corner of these papers.

21. Finally, it is my standard practice to personally review the completed submission having been attached as described in Paragraph 20. My review includes ensuring that all of the papers listed on the Return Receipt Postcard are present. My review also includes re-counting all of the pages to verify that the exact number of pages as listed in the Return Receipt Postcard are present. Once I have completed this review, I personally ensure that all items of the submission are placed into the Express Mail envelope and I personally seal the envelope.

22. I have generally followed this practice since my first filings with the United States Patent & Trademark Office.

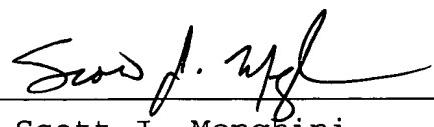
23. I have specifically followed the practice described above since at least prior to the beginning of 2001. As such, I estimate that I have filed over 20 applications in accordance with this specific practice.

24. Based upon my standard practice and my personal orientation toward detail, I am certain that the 19th sheet of drawings illustrating FIGS. 20 and 21 was sent with the Express Mail package labeled Express Mail Label No. EL631248995US to the United States Patent and Trademark Office on November 26, 2001.

25. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code,

Menghini Declaration
Appln. No. 09/994,519
Page -7-

and that such willful false statements may jeopardize the validity of the application, any patents issuing thereon, or any patent to which this Declaration is directed.



Scott J. Menghini
Reg. No. 42,880

Dated: January 17, 2002

Attachments: Exhibit A
 Exhibit B
 Exhibit C

EXHIBIT A



POST OFFICE TO ADDRESSEE		 EXPRESS MAIL UNITED STATES POSTAL SERVICE™	*EL631248995US*																				
ORIGIN (POSTAL USE ONLY) <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">PO Box Code <i>67198</i></td> <td style="width: 25%;">Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Saturday</td> <td style="width: 25%;">Flat Rate Envelope <input type="checkbox"/></td> <td style="width: 25%;"></td> </tr> <tr> <td>Date In <i>1/19/01</i></td> <td><input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM</td> <td>Postage <i>16.05</i></td> <td></td> </tr> <tr> <td>Time In <i>1629X</i></td> <td><input type="checkbox"/> Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day</td> <td>Return Receipt Fee</td> <td></td> </tr> <tr> <td>Weight <i>4 lbs.</i></td> <td>Int'l Alpha Country Code</td> <td>COD Fee</td> <td>Insurance Fee</td> </tr> <tr> <td>No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday</td> <td>Acceptance Check Inside <i>R/T</i></td> <td>Total Postage & Fees <i>16.05</i></td> <td></td> </tr> </table>				PO Box Code <i>67198</i>	Day of Delivery <input type="checkbox"/> Next <input checked="" type="checkbox"/> Saturday	Flat Rate Envelope <input type="checkbox"/>		Date In <i>1/19/01</i>	<input type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage <i>16.05</i>		Time In <i>1629X</i>	<input type="checkbox"/> Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee		Weight <i>4 lbs.</i>	Int'l Alpha Country Code	COD Fee	Insurance Fee	No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Check Inside <i>R/T</i>	Total Postage & Fees <i>16.05</i>	
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EXHIBIT B



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Please acknowledge receipt of the following Docket No. 70629 (7262) documents by applying the Patent and SJM/pf *Sujit* Trademark Office receipt hereto and mailing Mailed: November 26, 2001 this card:

Express Mail No.
EL631248995US

New Utility Patent Application of Crawford,
et al. entitled METHOD FOR
ESTIMATING CARRIER-TO-NOISE-
PLUS-INTERFERENCE RATIO (CNIR)
FOR OFDM WAVEFORMS AND THE
USE THEREOF FOR DIVERSITY
ANTENNA BRANCH SELECTION

JC955 U.S. PTO

09/994519



11/26/01

Utility Patent Application Transmittal (1 pg.); Fee Transmittal (1 pg.) in duplicate; Cover Sheet (1 pg.); Specification (including Written Description, Claims and Abstract) (77 pgs.); 75 Claims; Drawings (19 sheets); Executed Declaration/Power of Attorney (3 pgs.); Assignment and Recordation Cover Sheet (3 pgs.); and Return Receipt Postcard

EXHIBIT C

Please type a plus sign (+) inside this box → +

PTO/SB/05 (03-01)

Approved for use through 10/31/2002, OMB 0651-0032
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UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53 (b))

JAN 17 2002

APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application

1. Fee Transmittal Form (e.g., PTO/SB/17)
(Submit an original and a duplicate for fee processing)
2. Applicant claims small entity status.
See 37 CFR 1.27.
3. Specification [Total Pages
(preferred arrangement set forth below)] 77
- Descriptive title of the Invention
- Cross Reference to Related Applications
- Statement Regarding Fed sponsored R & D
- Reference to sequence listing, a table, or a computer program listing appendix
- Background of the Invention
- Brief Summary of the Invention
- Brief Description of the drawings (*if filed*)
- Detailed Description
- Claim(s)
- Abstract of the disclosure
4. Drawing(s)(35 U.S.C.113) [Total Sheets
19] 19
5. Oath or Declaration [Total Pages
3] 3
- a. Newly executed (original or copy)
- b. Copy from a prior application (37 CFR 1.63(d))
(for continuation/divisional with Box 18 completed)
- i. DELETION OF INVENTOR(S)
signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
6. Application Data Sheet. See 37 CFR 1.76

18. If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:

Continuation Divisional Continuation-in-part (CIP) of prior application Nos.: 09/800,444 and 09/800,231

Prior application information: Examiner To Be Determined

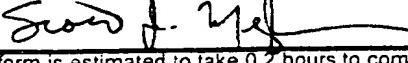
Group Art Unit: 2681/3662

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

<input checked="" type="checkbox"/> Customer Number or Bar Code Label	 2 2 2 2 4 2			or	<input type="checkbox"/> Correspondence address below
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Name	Scott J. Menghini				
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Name (Print/Type)	Scott J. Menghini	Registration No. (Attorney/Agent)	42,880	
Signature			Date	November 26, 2001

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.